Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

PRECIOUS BANKOLE,

Petitioner,

v.

IMMIGRATION & NATURALIZATION SERVICE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Dated: August 18, 2005

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QUESTIONS PRESENTED

I. Whether, in connection with her petition for a writ of habeas corpus, seeking protection under the Convention Against Torture, the United States Court of Appeals for the Second Circuit committed reversible error in concluding that Petitioner-Appellant, Precious Bankole, failed to meet her burden of proving more likely than not that she would be imprisoned and tortured under Nigerian law for a drug-related offense if she were returned to her home country of Nigeria.

II. Whether the United States Court of Appeals for the Second Circuit committed reversible error by concluding that Petitioner-Appellant is not eligible for family hardship relief under the interpretation of Immigration and Nationality Act, § 212(h), 8 U.S.C., § 1182(h), set forth in *Beharry v. Reno*, 183 F.Supp.2d 584 (S.D.N.Y. 2002), and whether the Supreme Court of the United States should allow Petitioner-Appellant relief for humanitarian reasons by extending the holding of *Beharry, supra*, to those who have committed aggravated felonies even where said offenses constituted aggravated felonies at the time they were committed.

PARTIES TO THE PROCEEDING

Pursuant to Rules of the Supreme Court of the United States Rule 14.1(b), all parties to the proceeding in the court whose judgment is sought to be reviewed are contained in the caption of this case.

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The Convention of Rights of the Child, U.N. Doc. A/44/736 (1989), reprinted in 28 I.L.M. 1457 (1989) 2, 11

Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3rd Sess., Supp. No. 1, U.N. Doc. A/810 (1948) 3, 11

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CITATIONS OF THE OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit which is the subject of the instant Petition for Writ of Certiorari is reported at 126 Fed.Appx. 503, 2005 WL 670611. *See Bankole v. Immigration and Naturalization Service*, 126 Fed.Appx. 503, 2005 WL 670611 (2nd Cir. 2005). (A. 1a.)

In addition, the opinion of the United States District Court for the District of Connecticut which was the subject of Petitioner-Appellant's appeal to the United States Court of Appeals for the Second Circuit in *Bankole v. Immigration and Naturalization Service*, 126 Fed.Appx. 503, 2005 WL 670611 (2nd Cir. 2005), is reported at 306 F.Supp.2d 185. *See Bankhole v. Immigration and Naturalization Service*, 306 F.Supp.2d 185 (2003). (A. 11a.)[1]

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[1] The reference to Petitioner-Appellant's surname as "Bankhole" in *Bankhole v. Immigration and Naturalization Service*, 306 F.Supp.2d 185 (2003), constitutes scrivener's error. *See Bankole v. Immigration and Naturalization Service*, 67 Fed.Appx. 49, 2003 WL 21309217 (2nd Cir. 2003)(in which the United States Court of Appeals for the Second Circuit issued its initial Summary Order vacating the original judgment of the United States District Court for the District of Connecticut and remanding this case to the United States District Court for the District of Connecticut for further proceedings).

BASIS FOR JURISDICTION

The Order of the United States Court of Appeals for the Second Circuit sought to be reviewed in Petitioner-Appellant's instant Petition for Writ of Certiorari was entered by the United States Court of Appeals for the Second Circuit on March 23, 2005. (*See* A. 1a: Summary Order of the United States Court of Appeals for the Second Circuit, dated 3/23/05).

The Supreme Court of the United States has jurisdiction in this matter pursuant to 28 U.S.C. § 1254(1).

TREATIES, STATUTES AND REGULATIONS INVOLVED IN THIS CASE

Pursuant to Rules of the Supreme Court of the United States Rule 14.1(f), the treaties, statutes and regulations involved in this case consist of the following:

I. *Treaties*

Convention Against Torture,
1465 U.N.T.S. 85, G.A. Res. 39/46,
39th Sess., U.N. GAOR Supp. No.51, at 197,
U.N. Doc. A/39/51 (1984) (A. 23a)

International Covenant on Civil and
Political Rights,
S. Treaty Doc. 95-2 (1978),
999 U.N.T.S. 171

The Convention of Rights of the Child,
U.N. Doc. A/44/736 (1989), reprinted in
28 I.L.M. 1457 (1989)

Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3rd Sess., Supp. No. 1, U.N. Doc. A/810 (1948)

II. *Statutes*

8 U.S.C. § 1101(a)(43) (A. 23a)

INA § 212(h), 8 U.S.C. § 1182(h) (A. 27a)

18 U.S.C. § 1503 (A. 28a)

18 U.S.C. § 1623 (A. 29a)

18 U.S.C. § 1956 (A. 31a)

III. *Regulations*

8 C.F.R. § 208.16(c) (A. 41a)

STATEMENT OF THE CASE

I. *Introduction*

This case is a habeas immigration appeal by Petitioner-Appellant, Precious Bankole (hereinafter, Appellant), who is trying to avoid removal to Nigeria, where she fears that she would be subjected to life-threatening prison conditions and be unable to care for her American-born son, who has Down's Syndrome.

Appellant is a lawful permanent resident alien who was convicted in the United States in 1997 on

federal charges of conspiracy to engage in money laundering, perjury and obstruction of justice.[2]

Appellant's criminal conviction led to Respondent-Appellee, Immigration and Naturalization Service (hereinafter, Appellee) seeking and obtaining a final order of removal to return Appellant to her native country of Nigeria.

Following re-entry against her of a final order of removal, Appellant filed a petition for writ of habeas corpus in the United States District Court for the District of Connecticut.

The district court subsequently denied relief on multiple grounds, including that Appellant was not eligible as an aggravated felon for a grant of discretionary relief from removal.

Appellant subsequently appealed to the United States Court of Appeals for the Second Circuit.

In a decision dated June 5, 2003, the United States Court of Appeals for the Second Circuit vacated the district court's judgment and remanded this matter to the district court.

On remand, the district court again denied relief in a decision dated December 5, 2003, and Appellant subsequently appealed to the United States Court of Appeals for the Second Circuit.

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[2] The Indictment charging Appellant with said offenses also contains numerous references, in the Count charging Appellant with conspiracy to commit money laundering, to violations of controlled substance laws, which Appellant contended before the United States District Court for the District of Connecticut and before the United States Court of Appeals for the Second Circuit, is a relevant indicator of the likelihood that Appellant would be imprisoned and subjected to abuse if she were forced to return to her native country of Nigeria.

In a decision dated March 23, 2005, the United States Court of Appeals affirmed the district court's December 5, 2003 decision.

Appellant subsequently filed the instant Petition for Writ of Certiorari with the Supreme Court of the United States, before whom this case is currently pending.

II. *Overview of the Proceedings Below*

Appellant initially filed a pro se petition for writ of habeas corpus in the United States District Court for the District of Connecticut, seeking relief from a final order of removal from the United States.

On August 8, 2002, the district court subsequently denied Appellant's petition by written ruling, and judgment entered on August 12, 2002.[3]

On September 6, 2002, Appellant filed a timely notice of appeal, and on October 7, 2002, Appellant filed a motion for appointment of counsel and for stay of removal, both of which motions were subsequently denied by the United States Court of Appeals for the Second Circuit on December 6, 2002.

In connection with said appeal, Appellant contended 1. that the Immigration Judge and the Board of Immigration Appeals committed reversible error by denying Appellant relief under the Convention Against Torture, and 2. that the district court committed reversible error by determining that Appellant was not eligible for family hardship relief

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[3] In its August 8, 2002 decision, the district court concluded, inter alia, that Appellant was not eligible as an aggravated felon for a grant of discretionary relief from removal.